

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**EXPERIAN MARKETING  
SOLUTIONS, INC., and EXPERIAN  
INFORMATION SOLUTIONS, INC.,**

**Plaintiffs,**

**v.**

**U.S. DATA CORPORATION and  
JEFF HERDZINA,**

**Defendants.**

**CASE NO. 8:09-cv-24**

**ORDER**

This matter is before the court on plaintiffs' (together, "Experian") Motion for Leave to File a Second Amended Complaint (Doc. 54) and the defendants' response in opposition thereto (Doc. 61).

On September 9, 2009, Judge Smith Camp filed a Memorandum and Order (Doc. 52) granting in part the defendants' motion to dismiss. The order provided, in part, that

Plaintiff Experian Marketing Solutions, Inc., is granted leave to file a Second Amended Complaint on or before September 21, 2009, to clarify its rights to the MOSAIC service mark and to attach a copy of its license agreement for use of the MOSAIC service mark, and for no other purpose,

In the absence of the filing of a Second Amended Complaint, any claim by Plaintiff Experian Marketing Solutions, Inc., as to the MOSAIC service mark in Count I will be dismissed[.]

Doc. 52 at pp. 21-22.

Experian missed the September 21, 2009 deadline and filed the pending motion shortly after 4:00 PM on September 22, 2009. In the motion, Experian explains:

Plaintiffs encountered some difficulty in receiving the requisite approval from their parent company, the publicly-traded, United Kingdom based Experian Limited. Experian Limited is the registrant of the MOSAIC® trademark. The original exclusive license was oral. The reduction of that license agreement to writing resulted in some difficulties with personnel who were unavailable for the execution

of the document in the United Kingdom. Plaintiffs are filing this motion within twelve hours of receipt of the final documentation.

The defendants vehemently oppose the motion, insisting that the plaintiffs' explanation is not credible, accusing the plaintiffs of manufacturing evidence, and stating that the plaintiffs have attached to the proposed pleading a "falsely backdated" license agreement for use of the MOSAIC service mark.<sup>1</sup>

It would appear that the proposed pleading contains amendments that fall within the scope of Judge Smith Camp's order, that is, "to clarify [Experian's] rights to the MOSAIC service mark and to attach a copy of its license agreement for use of the MOSAIC service mark." The real issue presented to the undersigned is whether the plaintiffs have demonstrated "good cause" and "excusable neglect" under Fed. R. Civ. P. 6(b)(1)(B) for filing their motion about 16 hours late. I find they have.

**IT IS ORDERED** that plaintiffs' Motion for Leave to File a Second Amended Complaint (Doc. 54) is granted, as follows:

1. Plaintiffs shall file and serve the Second Amended Complaint no later than **November 2, 2009**.
2. Defendants shall answer or otherwise respond to the Second Amended Complaint within the time allowed by Fed. R. Civ. P. 15(a).

**DATED October 29, 2009.**

**BY THE COURT:**

**s/ F.A. Gossett  
United States Magistrate Judge**

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<sup>1</sup>These are very serious accusations. If the defendants actually contend that plaintiffs' attorneys have violated Rule 11 of the Federal Rules of Civil Procedure, then they should proceed in accordance with Rule 11(c).